

SECOND REGULAR SESSION

SENATE BILL NO. 788

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR KLINDT.

Pre-filed January 3, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

3932S.011

AN ACT

To repeal section 323.100, RSMo, and to enact in lieu thereof five new sections relating to the Missouri propane safety act.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 323.100, RSMo, is repealed and five new sections
2 enacted in lieu thereof, to be known as sections 323.100, 323.150, 323.152,
3 323.154, and 323.156, to read as follows:

323.100. The director of the department of agriculture shall annually
2 inspect and test all liquid meters used for the measurement and retail sale of
3 liquefied petroleum gas and shall condemn all meters which are found to be
4 inaccurate. All meters shall meet the tolerances and specifications of the
5 National Institute of Standards and Technology Handbook 44, 1994 edition and
6 supplements thereto. It is unlawful to use a meter for retail measurement and
7 sale which has been condemned. All condemned meters shall be conspicuously
8 marked "inaccurate", and the mark shall not be removed or defaced except upon
9 authorization of the director of the department of agriculture or his authorized
10 representative. It is the duty of each person owning or in possession of a meter
11 to pay to the director of the department of agriculture at the time of each test a
12 testing fee [of ten dollars] **in an amount determined by the Missouri**
13 **propane gas authority**, except that the testing fee herein provided for shall not
14 be applied more than once in a calendar year to each meter tested. **Meters**
15 **certified by entities in states other than Missouri will be considered to**
16 **meet the requirements of this chapter except when the certifying state**
17 **does not recognize reciprocal certification of conforming Missouri**
18 **meters. In such case, the non-Missouri certified meter will be deemed**
19 **not in compliance with Missouri law and will be condemned and**
20 **removed from service within this state.**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

323.150. Sections 323.150 to 323.156 shall be known and may be
2 cited as the "Missouri Propane Safety Act". As used in sections 323.150
3 to 323.156, the following terms shall mean:

4 (1) "Affiliated industry", any person or firm engaged in the
5 manufacturing, assembling, and marketing of appliances, containers,
6 and products used in the propane industry, the interstate or intrastate
7 transportation or storage of propane, the installation or design of
8 propane piping systems, or other such affiliation with the commercial,
9 residential, or agricultural use of propane by consumers in Missouri;

10 (2) "Authority", the Missouri propane gas authority;

11 (3) "Department", the Missouri department of agriculture;

12 (4) "Director", the director of the department of agriculture or
13 the director's designee;

14 (5) "Person", any individual, group of individuals, partnership,
15 association, cooperative, corporation, or any other entity;

16 (6) "Producer", the owner of the propane at the time it is
17 recovered at a manufacturing facility, irrespective of the state where
18 production occurs;

19 (7) "Propane", propane, butane, mixtures of propane and butane,
20 and liquefied petroleum gas as defined by the National Fire Protection
21 Association Standard 58 for the storage and handling of liquefied
22 petroleum gases;

23 (8) "Public member", a member of the authority selected from
24 among significant users of odorized propane, organizations
25 representing significant users of odorized propane, public safety
26 officials, state propane gas regulatory officials, or voluntary standard-
27 setting organizations;

28 (9) "Qualified industry organization", the National Propane Gas
29 Association, the Missouri Propane Gas Association, the Gas Processors
30 Association, or a successor association;

31 (10) "Retail marketer", a business engaged primarily in selling
32 propane gas, its appliances, and equipment to the ultimate consumer
33 or to retail propane dispensers;

34 (11) "Wholesaler" or "reseller", a seller of propane who is not a
35 producer and who does not sell propane to the ultimate consumer.

323.152. 1. The "Missouri Propane Gas Authority" is hereby
2 created within the department of agriculture. The authority shall work

3 in conjunction with the department of agriculture to ensure the
4 administration and enforcement of this chapter and all rules and
5 regulations and orders promulgated thereunder. The powers of the
6 authority shall be vested in nine commissioners, who shall be residents
7 of this state, to be appointed by the governor, by and with the advice
8 and consent of the senate. The authority shall consist of three members
9 representing retail marketers of propane, one member representing
10 wholesalers or resellers of propane, one member representing the
11 transportation of propane or affiliated industries, one member
12 representing the department of public safety, one member representing
13 the department of agriculture, one member representing the
14 department of natural resources, and one public member. The
15 commissioners annually shall elect from among their number a
16 chairman and a vice chairman, and such other officers as they may
17 deem necessary.

18 2. The commissioners shall serve five-year terms, with each term
19 beginning July 1 and ending on June 30. However, of the
20 commissioners first appointed, two shall be appointed for a term of two
21 years, two shall be appointed for a term of three years, two shall be
22 appointed for a term of four years, and three shall be appointed for a
23 term of five years. Each commissioner appointed thereafter shall be
24 appointed for a term ending five years from the date of expiration of
25 the term for which his predecessor was appointed. A person appointed
26 to fill a vacancy prior to the expiration of such a term shall be
27 appointed for the remainder of the term. No commissioner appointed
28 by the governor under this section shall serve more than two
29 consecutive full terms. Each commissioner shall hold office for the
30 term of such appointment and until such successor has been appointed
31 and qualified.

32 3. Other than the public member, authority members shall be
33 full-time employees or owners of businesses in the industry or the
34 agency they represent. Not more than five of the commissioners shall
35 be of the same political party.

36 4. Notwithstanding the provisions of any other law to the
37 contrary:

38 (1) No officer or employee of this state shall be deemed to have
39 forfeited or shall forfeit such office or employment by reason of his

40 acceptance of membership on the authority or such service to the
41 authority;

42 (2) It shall not constitute a conflict of interest for a director,
43 officer, or employee of any company selling propane at retail or
44 wholesale, or engaged in the manufacture, sale, or distribution of
45 propane-use equipment, or in the transportation, storage, or marketing
46 of propane, or any other firm, person, or corporation, to serve as a
47 member of the authority, provided such trustee, director, officer, or
48 employee shall abstain from deliberation, action, and vote by the
49 authority in each instance where the business affiliation or public
50 office association of any such trustee, director, officer, or employee is
51 involved.

52 5. Commissioners shall receive no compensation for the
53 performance of their duties under this section, but each commissioner
54 shall be reimbursed from the funds of the authority for his actual and
55 necessary expenses incurred in carrying out his or her official duties.

56 6. Meetings shall be held at the call of the chairman or whenever
57 two commissioners so request. Five commissioners of the authority
58 shall constitute a quorum. No vacancy in the membership of the
59 authority shall impair the right of a quorum to exercise all the rights
60 and perform all the duties of the authority.

61 7. The commissioners shall employ an executive director. The
62 executive director also shall serve as the secretary for the authority
63 and shall administer, manage, and direct the affairs and business of the
64 authority, subject to the policies, control, and direction of the
65 commissioners. The authority may employ technical experts and such
66 other officers, agents, and employees as deemed necessary, and may fix
67 their qualifications, duties, and compensation.

68 8. The executive director shall keep a record of the proceedings
69 of the authority and shall be custodian of all books, documents, and
70 papers filed with the authority and of its minute book and seal. The
71 executive director shall have the authority to cause to be made copies
72 of all minutes and other records and documents of the authority and to
73 give certificates, under the seal of the authority, to the effect that such
74 copies are true copies, and all persons dealing with the authority may
75 rely upon such certificates.

76 9. Before entering into his or her duties, each commissioner of

77 the authority shall execute a surety bond for fifty thousand dollars, and
78 the executive director shall execute a surety bond for one hundred
79 thousand dollars or, in lieu thereof, the chairman of the authority shall
80 execute a blanket bond covering all members, the executive director,
81 and the employees or other officers of the authority. Each surety bond
82 shall be conditioned on the faithful performance of the duties of the
83 office or offices covered, shall be executed by a surety company
84 authorized to transact business in this state as surety, shall be
85 approved by the attorney general, and shall be filed in the office of the
86 secretary of state. The cost of each such bond shall be paid by the
87 authority.

88 10. At the beginning of each fiscal year, the authority shall
89 prepare and submit to the director a budget plan, including the
90 probable costs of all programs, projects, and contracts and a
91 recommended rate of assessment and other fees as may be necessary to
92 cover such costs. The director shall have the authority to approve or
93 modify the budget.

94 11. The authority shall, following the close of each fiscal year,
95 submit an annual report of its activities for the preceding year to the
96 director, the governor, and the general assembly. Each report shall set
97 forth a complete operating and financial statement for the authority
98 during the fiscal year it covers. At least once in each year, an
99 independent certified public accountant shall audit the books and
100 accounts of the authority.

101 12. The authority shall have the power necessary to:

102 (1) Sue and be sued in its own name;

103 (2) Have an official seal and alter the same at pleasure;

104 (3) Have perpetual succession; and

105 (4) Maintain an office at such place or places within this state as
106 the department may designate.

107 13. The authority shall have the following duties:

108 (1) Develop comprehensive plans and programs for the
109 prevention, control and abatement of propane-related accidents in
110 Missouri;

111 (2) Advise, consult, and cooperate with other agencies of the
112 state, the federal government, other states, and interstate agencies, as
113 well as with affected groups, political subdivisions, and industries in

114 furtherance of the purposes of chapter 323;

115 (3) Accept gifts, contributions, donations, loans and grants from
116 the federal government and from other sources, public or private, for
117 carrying out any of its functions. Such funds shall not be expended for
118 other than the purposes for which provided.

119 14. Records and documents submitted by propane companies to
120 the Missouri propane gas authority relating to business operations,
121 such as total gallons sold, number of employees, or equipment
122 inventories, shall be deemed a closed record as such term is defined in
123 section 610.010, RSMo, may be discussed in a meeting that has been
124 closed under section 610.022, RSMo.

125 15. The Missouri propane gas authority hereby preempts the
126 field of regulating the inspection of and providing specifications for
127 propane as regulated in this section and subsequent standards,
128 regulations, and codes as adopted by the state. It shall be unlawful for
129 any political subdivision to impose by ordinance, order, or regulation
130 any restriction on the use, sale, installation, maintenance, or repair of
131 propane as regulated by this chapter.

132 16. A commissioner shall be removed from office by the governor
133 for misfeasance, malfeasance, or willful neglect of duty or other cause
134 after notice and public hearing, unless such notice or hearing shall be
135 expressly waived in writing.

136 17. The executive director or any designated employee shall have
137 free access, during reasonable hours, to any premises in the state
138 where an installation covered by this chapter is being constructed, or
139 is being installed, for the purpose of ascertaining whether said
140 installation is being constructed and installed in accordance with the
141 applicable provisions.

323.154. 1. The fee for the inspections of propane installations
2 deemed necessary under this chapter shall be assessed by the Missouri
3 propane gas authority, in conjunction with the department, at a rate
4 per odorized gallon that will approximately yield revenue equal to the
5 expenses of administering this chapter.

6 2. The authority shall set the initial assessment at no greater
7 than one-tenth of one cent per gallon. Thereafter, annual assessments
8 shall be sufficient to cover the costs of the plans and programs of the
9 authority. The assessment shall not be greater than one-half cent per

10 gallon of odorized propane. The assessment may not be raised by more
11 than one-tenth of one cent per gallon annually.

12 3. The owner of propane immediately prior to odorization in this
13 state or the owner of odorized propane at the time of import into this
14 state shall be responsible for the payment of the assessment on the
15 volume of propane at the time of import or odorization, whichever is
16 later. Assessments shall be remitted to the authority on a monthly
17 basis by the twenty-fifth of the month following the month of
18 collection. Non-odorized propane shall not be subject to assessment
19 until odorized. For purposes of collection, all propane either odorized
20 at terminal locations in Missouri for delivery to either in-state or out-
21 state locations, or propane odorized at terminal locations outside
22 Missouri and delivered to Missouri as identified on a bill of lading,
23 shall be considered as assessable.

24 4. The director may, by rule, and with the concurrence of the
25 authority, establish an alternative means for the authority to collect
26 the assessment if another means is found to be more efficient and
27 effective. The director may, by rule, establish a late payment charge
28 and rate of interest to be imposed on any person who fails to remit to
29 the authority any amount due under this chapter.

30 5. The Missouri propane gas authority, in conjunction with the
31 department, shall set fees for permits, licenses, and certificates
32 required by this chapter. Fees shall be determined by the authority to
33 provide sufficient funds for the operation of the authority and its
34 programs and shall be set by rule promulgated in accordance with the
35 provisions of section 323.020. The board may alter the fee schedule
36 once every two years. Any funds collected under this section shall be
37 deposited in the "propane inspection fund".

38 6. There is hereby created in the state treasury the "Propane
39 Inspection Fund", which shall consist of all funds collected under this
40 section. The state treasurer shall be custodian of the fund and shall
41 approve disbursements from the fund in accordance with sections
42 30.170 and 30.180, RSMo. Upon appropriation, money in the fund shall
43 be used solely for the administration and enforcement of this
44 chapter. Notwithstanding the provisions of section 33.080, RSMo, to the
45 contrary, any moneys remaining in the fund at the end of the biennium
46 shall not revert to the credit of the general revenue fund. The state

47 treasurer shall invest moneys in the fund in the same manner as other
48 funds are invested. Any interest and moneys earned on such
49 investments shall be credited to the fund.

323.156. 1. Violations of this chapter may be referred to the
2 attorney general for appropriate action, except that nothing shall be
3 construed as requiring the director to refer to the attorney general
4 violations of this chapter whenever the director, at the direction of the
5 authority, believes that the administration and enforcement of the
6 regulations would be served adequately by administrative action under
7 subsection 2 of this section or suitable written notice or warning to any
8 person committing the violations.

9 2. Any person who fails or refuses to pay, collect, or remit any
10 assessment or fee required of the person by this chapter may be
11 assessed a civil penalty by the director, at the direction of the
12 authority, of not less than five hundred dollars nor more than five
13 thousand dollars for each violation. Each violation shall be a separate
14 offense. In addition, or in lieu of such civil penalty, the director, at the
15 direction of the authority, may issue an order requiring the person to
16 cease-and-desist from continuing the violation. No penalty shall be
17 assessed nor a cease-and-desist order issued unless the person is given
18 notice and opportunity for a hearing before the director with respect
19 to the violation. The order of the director, at the direction of the
20 authority, assessing a penalty or imposing a cease-and-desist order
21 shall be final and conclusive unless the person affected by the order
22 files a petition for review under chapter 536, RSMo. Any person who
23 fails to obey a cease-and-desist order after it has become final shall be
24 subject to a civil penalty assessed by the director, after an opportunity
25 for hearing before the director, of not more than five hundred dollars
26 for each offense. Each day that the failure continues shall be deemed
27 a separate offense. If any person fails to pay an assessment of a civil
28 penalty after it has become a final order, the director shall refer the
29 matter to the attorney general for recovery of the amount assessed in
30 any appropriate circuit court of the state. In such action, the validity
31 and appropriateness of the final order imposing the civil penalty shall
32 not be subject to review.